

By Representative Byrd

1                                   A bill to be entitled  
2           An act relating to water and land use  
3           relationships; amending s. 163.3177, F.S.;  
4           providing additional criteria and requirements  
5           for comprehensive plan amendments; amending s.  
6           163.3180, F.S.; providing additional  
7           limitations on concurrency requirements;  
8           deleting a public transit facilities exception  
9           to certain concurrency requirements; amending  
10          s. 373.019, F.S.; revising a definition;  
11          amending s. 373.223, F.S.; providing additional  
12          requirements for obtaining a permit; providing  
13          additional criteria for board evaluation of use  
14          of ground or surface waters; amending s.  
15          373.229, F.S.; requiring board approval of  
16          permit applications during water shortages or  
17          emergencies; amending s. 373.246, F.S.;  
18          revising requirements, procedures, and  
19          limitations for declarations of a water  
20          shortage or emergency; amending s. 373.414,  
21          F.S.; revising criteria for certain mitigation  
22          activities in granting or denying a permit;  
23          providing an effective date.

24  
25 Be It Enacted by the Legislature of the State of Florida:

26  
27           Section 1. Paragraph (c) of subsection (6) of section  
28   163.3177, Florida Statutes, is amended to read:

29           163.3177 Required and optional elements of  
30   comprehensive plan; studies and surveys.--  
31

1           (6) In addition to the requirements of subsections  
2 (1)-(5), the comprehensive plan shall include the following  
3 elements:

4           (c) A general sanitary sewer, solid waste, drainage,  
5 potable water, and natural groundwater aquifer recharge  
6 element correlated to principles and guidelines for future  
7 land use, indicating ways to provide for future potable water,  
8 drainage, sanitary sewer, solid waste, and aquifer recharge  
9 protection requirements for the area. The element may be a  
10 detailed engineering plan including a topographic map  
11 depicting areas of prime groundwater recharge. The element  
12 shall describe the problems and needs and the general  
13 facilities that will be required for solution of the problems  
14 and needs. The element shall also include a topographic map  
15 depicting any areas adopted by a regional water management  
16 district as prime groundwater recharge areas for the Floridan  
17 or Biscayne aquifers, pursuant to s. 373.0395. These areas  
18 shall be given special consideration when the local government  
19 is engaged in zoning or considering future land use for said  
20 designated areas. For areas served by septic tanks, soil  
21 surveys shall be provided which indicate the suitability of  
22 soils for septic tanks. All comprehensive plan amendments that  
23 would increase the amount of use, density, or intensity of use  
24 on land shall be supported by data and analysis which  
25 demonstrates that adequate potable water will be available to  
26 the development without contributing to harm to water  
27 resources or wetlands, increasing the extent of water  
28 shortages, or compromising the ability of a water management  
29 district to establish and implement a minimum flow and level  
30 for any water body. All comprehensive plan amendments that  
31 would increase the amount of use, density, or intensity of use

1 on land shall be based upon the relevant data from the  
2 appropriate water management district concerning water  
3 recharge areas, floodprone areas, and minimum flows and  
4 levels.

5 Section 2. Paragraphs (d) and (e) are added to  
6 subsection (2) of section 163.3180, Florida Statutes, and  
7 subsection (4) of said section is amended, to read:

8 163.3180 Concurrency.--

9 (2)

10 (d) No local government shall provide public  
11 facilities or services that significantly impact natural  
12 resources or contribute further to incrementally impact any  
13 natural resource which exists in a significantly degraded  
14 state due to past or current individual or cumulative impacts.

15 (e) No local government shall issue a development  
16 permit for other than facilities deemed critical by the state  
17 for public health, safety, and welfare, without satisfying the  
18 requirements of paragraph (d).

19 (4)~~(a)~~ The concurrency requirement as implemented in  
20 local comprehensive plans applies to state and other public  
21 facilities and development to the same extent that it applies  
22 to all other facilities and development, as provided by law.

23 ~~(b) The concurrency requirement as implemented in~~  
24 ~~local comprehensive plans does not apply to public transit~~  
25 ~~facilities. For the purposes of this paragraph, public~~  
26 ~~transit facilities include transit stations and terminals,~~  
27 ~~transit station parking, park-and-ride lots, intermodal public~~  
28 ~~transit connection or transfer facilities, and fixed bus,~~  
29 ~~guideway, and rail stations. As used in this paragraph, the~~  
30 ~~terms "terminals" and "transit facilities" do not include~~  
31

1 ~~airports or seaports or commercial or residential development~~  
2 ~~constructed in conjunction with a public transit facility.~~

3 Section 3. Subsection (13) of section 373.019, Florida  
4 Statutes, is amended to read:

5 373.019 Definitions.--When appearing in this chapter  
6 or in any rule, regulation, or order adopted pursuant thereto,  
7 the following words shall, unless the context clearly  
8 indicates otherwise, mean:

9 (13) "Reasonable-beneficial use" means the use of  
10 water in such quantity as is necessary for economic and  
11 efficient utilization for a purpose and in a manner which is  
12 ~~both~~ reasonable and consistent with the public interest, is  
13 the subject of a binding drought management plan, and will not  
14 cause or contribute to a cumulative, significant impact.

15 Section 4. Subsections (1) and (4) of section 373.223,  
16 Florida Statutes, are amended, and subsection (5) is added to  
17 said section, to read:

18 373.223 Conditions for a permit.--

19 (1) To obtain a permit pursuant to the provisions of  
20 this chapter, the applicant must establish that the proposed  
21 use of water:

22 (a) Is a reasonable-beneficial use as defined in s.  
23 373.019. ~~†~~

24 (b) Will not interfere with any presently existing  
25 legal use of water. ~~† and~~

26 (c) Is consistent with the public interest.

27 (d) First avoids and then minimizes impacts to natural  
28 resources to the extent reasonably practicable.

29 (e) Will include a mitigation plan, approved by the  
30 governing board or the department, for avoiding or minimizing  
31 adverse impacts.

1       (f) Will include reasonable efforts to mitigate past  
2 impacts related to water use.

3       (g) Can and will be reduced to levels specified by the  
4 district during times of mandatory water conservation  
5 requirements.

6       (h) Is consistent with the implementation of minimum  
7 flows and levels for all impacted water bodies.

8       (i) Is consistent with the comprehensive plans of the  
9 affected local governments.

10

11 No permit shall be issued for a development or land use, or  
12 for an amount of water, that is not consistent with this  
13 subsection.

14       (4) The governing board or the department, by  
15 regulation, may reserve from use by permit applicants, water  
16 in such locations and quantities, and for such seasons of the  
17 year, as in its judgment may be required for the protection of  
18 natural resources, fish and wildlife, or the public health and  
19 safety. Such reservations shall be subject to periodic review  
20 and revision in the light of changed conditions. However, all  
21 presently existing legal uses of water shall be protected so  
22 long as such use is not contrary to the public interest.

23       (5) When evaluating whether a potential use of ground  
24 or surface water is consistent with the public interest,  
25 pursuant to paragraph (1)(c), the governing board or  
26 department shall consider:

27       (a) Whether the activity will adversely affect the  
28 public health, safety, or welfare or the property of others.

29       (b) Whether the activity will adversely affect the  
30 conservation of natural resources, fish, and wildlife,  
31 including endangered or threatened species or their habitats.

1       (c) Whether the activity will adversely affect  
2 navigation or the flow of water.

3       (d) Whether the activity will adversely affect the  
4 fishing or recreational values or marine productivity.

5       (e) Whether the activity will be of a temporary or  
6 permanent nature.

7       (f) Whether the activity will adversely affect or will  
8 enhance significant historical and archaeological resources  
9 under the provisions of s. 267.061.

10       (g) The current condition and relative value of the  
11 water resource being affected by the proposed activity.

12       (h) The impact to natural resources, including  
13 incremental adverse impacts to any natural resource which  
14 exists in a significantly degraded state due to past or  
15 current individual or cumulative impacts.

16       (i) All economically and technically feasible  
17 alternatives to the proposed source, including, but not  
18 limited to, desalination, conservation, reuse of nonpotable  
19 reclaimed water and stormwater, and aquifer storage and  
20 recovery.

21       Section 5. Subsection (4) of section 373.229, Florida  
22 Statutes, is amended to read:

23       373.229 Application for permit.--

24       (4) If the proposed application is for less than  
25 100,000 gallons per day, the governing board or the department  
26 may consider the application and any objections thereto  
27 without a hearing. If the proposed application is for 100,000  
28 gallons per day or more and no objection is received, the  
29 governing board or the department, after proper investigation  
30 by its staff, may, at its discretion, approve the application  
31 without a hearing. Notwithstanding the provisions of this

1 subsection, all applications shall require approval by the  
2 governing board during any water shortage or emergency.

3 Section 6. Subsections (1), (2), (3), and (7) of  
4 section 373.246, Florida Statutes, are amended to read:

5 373.246 Declaration of water shortage or emergency.--

6 (1) The governing board or the department by  
7 regulation shall formulate a plan, if not in effect on the  
8 effective date of this act, no later than January 1, 2002, for  
9 implementation during periods of water shortage. As a part of  
10 this plan the governing board or the department shall adopt a  
11 reasonable system of water-use classification according to  
12 source of water supply; method of extraction, withdrawal, or  
13 diversion; or use of water or a combination thereof. The plan  
14 may include provisions for variances and alternative measures  
15 to prevent undue hardship and ensure equitable distribution of  
16 water resources. The district shall issue orders requiring any  
17 local government within the part of the district subject to  
18 the water shortage order or, in the case of a regional water  
19 supply authority, the entire area served, whether or not the  
20 entire area is subject to the order, to obtain approval from  
21 the governing board for all development permits which  
22 individually or cumulatively have the potential to be  
23 inconsistent with efforts to mitigate the water shortage.

24 (2) The governing board or the department by order may  
25 declare that a water shortage exists for a source or sources  
26 within all or part of the district when insufficient water is  
27 or will be available to meet the present and anticipated  
28 requirements of the users or when conditions are such as to  
29 require ~~temporary~~ reduction in total use within the area to  
30 protect natural water resources from ~~serious~~ harm. The order  
31

1 shall implement the plan adopted under subsection (1) and  
2 shall constitute ~~Such orders will be~~ final agency action.

3 (3) In accordance with the plan adopted under  
4 subsection (1), the governing board or the department may  
5 impose such restrictions on one or more classes of water uses  
6 as may be necessary to protect the natural water resources of  
7 the area from ~~serious~~ harm and to restore them to their  
8 previous condition.

9 (7) If an emergency condition exists due to a water  
10 shortage within any area of the district, and if the  
11 department, or the executive director of the district with the  
12 concurrence of the governing board, finds that the exercise of  
13 powers under subsection (1) is not sufficient to protect the  
14 public health, safety, or welfare; the health of animals,  
15 fish, ~~or~~ aquatic life, or other natural resources; a public  
16 water supply; or recreational, commercial, industrial,  
17 agricultural, or other reasonable uses, the department ~~it~~ or  
18 the executive director shall ~~he or she may~~, pursuant to the  
19 provisions of s. 373.119, issue emergency orders reciting the  
20 existence of such an emergency and requiring that such action,  
21 including, but not limited to, apportioning, rotating,  
22 limiting, or prohibiting the use of the water resources of the  
23 district, be taken as the department or the executive director  
24 deems necessary to meet the emergency.

25 (a) During an emergency, the plan shall be  
26 automatically implemented to assure the availability of water  
27 for the health and safety of existing residents.

28 (b) Notwithstanding the provision for variances and  
29 prevention of undue hardship, no new permit shall be issued,  
30 nor shall any expansion of an existing permit be granted,  
31 during the emergency within all or part of a district or the



1 part thereof served by a regional water supply authority,  
2 except permits necessary to assure availability of water for  
3 the health and safety of existing residents.

4 (c) Notwithstanding paragraphs (a) and (b), a  
5 permittee shall submit a specific plan for assuring that the  
6 permittee can meet specified water conservation goals designed  
7 to meet emergency water conservation goals reasonably expected  
8 to be adopted by the district during the duration of the  
9 requested permit.

10 Section 7. Paragraph (b) of subsection (1) of section  
11 373.414, Florida Statutes, is amended to read:

12 373.414 Additional criteria for activities in surface  
13 waters and wetlands.--

14 (1) As part of an applicant's demonstration that an  
15 activity regulated under this part will not be harmful to the  
16 water resources or will not be inconsistent with the overall  
17 objectives of the district, the governing board or the  
18 department shall require the applicant to provide reasonable  
19 assurance that state water quality standards applicable to  
20 waters as defined in s. 403.031(13) will not be violated and  
21 reasonable assurance that such activity in, on, or over  
22 surface waters or wetlands, as delineated in s. 373.421(1), is  
23 not contrary to the public interest. However, if such an  
24 activity significantly degrades or is within an Outstanding  
25 Florida Water, as provided by department rule, the applicant  
26 must provide reasonable assurance that the proposed activity  
27 will be clearly in the public interest.

28 (b) If the applicant is unable to otherwise meet the  
29 criteria set forth in this subsection and provided all  
30 reasonable efforts to avoid and minimize the impact have been  
31 exhausted, the governing board or the department, in deciding

1 to grant or deny a permit, shall consider measures proposed by  
2 or acceptable to the applicant to mitigate adverse effects  
3 that may be caused by the regulated activity. Such measures  
4 may include, but are not limited to, onsite mitigation,  
5 offsite mitigation, offsite regional mitigation, and the  
6 purchase of mitigation credits from mitigation banks permitted  
7 under s. 373.4136. It shall be the responsibility of the  
8 applicant to choose the form of mitigation. The mitigation  
9 must offset the adverse effects caused by the regulated  
10 activity.

11 1. The department or water management districts may  
12 accept the donation of money as mitigation only where the  
13 donation is specified for use in a duly noticed environmental  
14 creation, preservation, enhancement, or restoration project,  
15 endorsed by the department or the governing board of the water  
16 management district, which offsets the impacts of the activity  
17 permitted under this part. However, the provisions of this  
18 subsection shall not apply to projects undertaken pursuant to  
19 s. 373.4137 or chapter 378. Where a permit is required under  
20 this part to implement any project endorsed by the department  
21 or a water management district, all necessary permits must  
22 have been issued prior to the acceptance of any cash donation.  
23 After the effective date of this act, when money is donated to  
24 either the department or a water management district to offset  
25 impacts authorized by a permit under this part, the department  
26 or the water management district shall accept only a donation  
27 that represents the full cost to the department or water  
28 management district of undertaking the project that is  
29 intended to mitigate the adverse impacts. The full cost shall  
30 include all direct and indirect costs, as applicable, such as  
31 those for land acquisition, land restoration or enhancement,

1 perpetual land management, and general overhead consisting of  
2 costs such as staff time, building, and vehicles. The  
3 department or the water management district may use a  
4 multiplier or percentage to add to other direct or indirect  
5 costs to estimate general overhead. Mitigation credit for  
6 such a donation shall be given only to the extent that the  
7 donation covers the full cost to the agency of undertaking the  
8 project that is intended to mitigate the adverse impacts.  
9 However, nothing herein shall be construed to prevent the  
10 department or a water management district from accepting a  
11 donation representing a portion of a larger project, provided  
12 that the donation covers the full cost of that portion and  
13 mitigation credit is given only for that portion. The  
14 department or water management district may deviate from the  
15 full cost requirements of this subparagraph to resolve a  
16 proceeding brought pursuant to chapter 70 or a claim for  
17 inverse condemnation. Nothing in this section shall be  
18 construed to require the owner of a private mitigation bank,  
19 permitted under s. 373.4136, to include the full cost of a  
20 mitigation credit in the price of the credit to a purchaser of  
21 said credit.

22         2. The department and each water management district  
23 shall report to the Executive Office of the Governor by  
24 January 31 of each year all cash donations accepted under  
25 subparagraph 1. during the preceding calendar year for wetland  
26 mitigation purposes. The report shall exclude those  
27 contributions pursuant to s. 373.4137. The report shall  
28 include a description of the endorsed mitigation projects and,  
29 except for projects governed by s. 373.4135(6), shall address,  
30 as applicable, success criteria, project implementation status  
31

1 and timeframe, monitoring, long-term management, provisions  
2 for preservation, and full cost accounting.

3 3. If the applicant is unable to meet water quality  
4 standards because existing ambient water quality does not meet  
5 standards, the governing board or the department shall  
6 consider mitigation measures proposed by or acceptable to the  
7 applicant that cause net improvement of the water quality in  
8 the receiving body of water for those parameters which do not  
9 meet standards.

10 4. If mitigation requirements imposed by a local  
11 government for surface water and wetland impacts of an  
12 activity regulated under this part cannot be reconciled with  
13 mitigation requirements approved under a permit for the same  
14 activity issued under this part, including application of the  
15 uniform wetland mitigation assessment method adopted pursuant  
16 to subsection (18), the mitigation requirements for surface  
17 water and wetland impacts shall be controlled by the permit  
18 issued under this part.

19 Section 8. This act shall take effect October 1, 2001.

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21  
22 HOUSE SUMMARY

23 Revises comprehensive plan and concurrency provisions and  
24 consumptive use of water permit provisions to require  
25 greater coordination of uses of land and water resources  
26 to protect natural resources, surface and ground waters,  
27 and wetlands.  
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